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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/729,330

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Cameron A. Riddell

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09/29/2005

JONES DAY

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EXAMINER

ROWAN, KURT C

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,330

Applicant(s)

RIDDELL, CAMERON A.

Examiner

Kurt Rowan

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ~~August 31, 2005~~ **March 4, 2004**
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the round elements, the sewing, gluing, heat welding, the screws, the staples must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 5, 13, 14, 16, 19, 21, 23, 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Spooner.

The patent to Spooner shows an electric deterrent having a base 4 having at least two areas which are of non-conductive material. In reference to claims 1 and 16, Spooner shows the base is attachable to a surface such as the ground between two end posts of a fence under the gate as shown in Fig. 1. Spooner shows at least a pair of electrically conducting elements 10 attached to the non-conductive areas of the base. Spooner shows the elements 16, 18 being attachable to the positive and negative terminals of a power source 12. Spooner discloses in page 2, paragraph 21 that the conductive element may be mesh wires which can be considered as braided wire. Spooner discloses a wire which can be considered as a metal since wire can be defined as “a usually pliable metallic strand” by The American Heritage Dictionary, Second College Edition. In reference to claims 13 and 23, Spooner discloses that the base may be constructed out of any elastomeric material in paragraph 18 on page 2. In reference to claim 24, Spooner shows the strands 10 substantially circular in cross-section in Fig. 3.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 4, 6-13, 15, 17, 18, 20, 22, and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spooner.

The patent to Spooner shows an electric deterrent as discussed above. In reference to claim 2, Spooner employs a wire mesh which would be flat or planar, but it would have been obvious to employ other shapes or geometries since the function is the same and no stated problem is solved. Also, see *In re Dailey et al.*, 149 USPQ 47. In reference to claims 4, 6-8, Spooner does not disclose how the braided elements are attached to the base, but it would have been obvious to employ old and well known methods such as sewing, gluing, heat welding, screws, or staples since the function is the same. In reference to claims 9, 10, 11, Spooner does not disclose that the strands are made from copper, stainless steel, or zinc coated copper, but it would have been obvious to make the strands from these conducting metals since the selection of a known material is based on its suitability for the intended use. See *in re Leshin*, 125 USPQ 416. In reference to claims 12 and 22, Spooner does not disclose that the base is made from polyvinyl chloride, but it would have been obvious to employ polyvinyl chloride since the selection of a known material is based on its suitability for the intended use. See the citation to *In re Leshin*, above. In reference to claims 15 and 18, Spooner does not

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disclose that the conductive element is made of conductive strands and non-conductive strands, but it would have been obvious to employ conductive and non-conductive strands to decrease the weight of the strand. In reference to claim 25, Spooner show the strands to be round in cross-section, but it would have been obvious to employ strands that are flat in cross-section since the function is the same noting that changes in shape have been held to be obvious. See the citation to In re Dailey et al., above. In reference to claims 26-27, Spooner does not disclose if the strands are woven loosely or tightly together, but it would have been obvious to employ either weave since the function is the same and no stated problem is solved. Also, the relative looseness or tightness of the weave would be determined through routine experimentation depending on the size of the pest attempting to cross the barrier.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents and printed patent applications to Wolgram, Celata, Negre, Black, Crowl, Just, and Gengler show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan
Primary Examiner
Art Unit 3643

KR